



Innovative Payments Association

777 6th Street, 11th Floor

Washington, DC 20001

202.548.7200

February 4, 2019

Submitted via E-Mail at: FederalRegisterComments@cfpb.gov

Comment Intake
Bureau of Consumer Financial Protection
1700 G Street NW
Washington, DC 20552

Re: Bureau of Consumer Financial Protection
Notice of Proposed Policy Guidance and Procedural Rule – Policy on No-Action Letters
and the CFPB Product Sandbox
[Document No. CFPB–2018–0042]

To Whom it May Concern:

This letter is submitted to the Consumer Financial Protection Bureau (the "CFPB") on behalf of the Innovative Payments Association, f/k/a the Network Branded Prepaid Card Association ("IPA")¹ in response to the CFPB's proposed Policy on No-Action Letters and the CFPB Product Sandbox (the "Proposed Guidance").² The Proposed Guidance seeks public input regarding the CFPB's proposal to modify its processes and policies for the granting of no action letters ("NAL(s)"), including the proposed creation of a CFPB "Product Sandbox" program (collectively, the "NAL Program"). The IPA appreciates the opportunity to share its comments on the Proposed Guidance. The Proposed Guidance includes a number of important and positive changes to the NAL Program that our members believe may encourage greater industry participation. Moreover, implementing a more effective NAL Program is of particular importance to our members that issue prepaid account products due to the CFPB's upcoming Prepaid Account Final Rule, which goes into effect on April 1, 2019. An effective NAL Program would provide an important avenue for such companies to test new and innovative products. The IPA is concerned, however, that without additional clarifications as to how the CFPB intends to coordinate with other regulators and state authorities on the NAL Program, companies may remain hesitate to participate out of a fear that they will be subject to some additional form of liability.

For this reason, we urge the CFPB to adopt the changes included in its Proposed Guidance with the requested clarifications below and we look forward to working with the CFPB on this important issue.

The Proposed Guidance includes a number of positive changes to the CFPB's NAL Program that should be included any finalized modifications

¹ The IPA is a trade organization that serves as the leading voice of the electronic payments sector, including prepaid products, mobile wallets, and person-to-person (P2P) technology for consumers, businesses and governments at all levels. The IPA's goal is to encourage efficient use of electronic payments, cultivate financial inclusion through educating and empowering consumers, represent the industry before legislative and regulatory bodies, and provide thought leadership. The comments made in this letter do not necessarily represent the position of all members of the IPA.

² 83 Fed. Reg. 64036 – 64045 (Dec. 13, 2018).



The Proposed Guidance includes a number of important, positive changes to the NAL Program. Such positive changes include, but are not limited to, the following: (i) removing requirements on providers to share data with the CFPB; (ii) eliminating time limits on the effectiveness of an issued NAL; (iii) expanding the NAL application process to include trade associations as well as individual companies; and (iv) removing unnecessarily limiting policy statements that restrict on how often and when an NAL can be provided.

The IPA supports these changes and urges the CFPB to adopt them as part of any final modifications to the NAL Program.

As part of any finalized revisions to its NAL Program, the CFPB should clarify how participating companies will be shielded from liability from other regulators, including state authorities

While the IPA believes that many changes proposed by the CFPB are positive and may help to encourage greater participation in the NAL Program, the IPA cautions that without further clarification on how the CFPB intends to coordinate with other federal and state regulators, companies may remain hesitant to participate in the NAL Program.

Based on feedback from our members, we believe that the primary impediment to a company's participation in the NAL Program is the concern over how information provided to the CFPB may be shared with other federal and state regulators, and a lack of clarity and comfort that the company will not face potential liability in the form of an enforcement action or violation of state law. While we understand that the CFPB intends to share information submitted to it as part of the NAL Program in accordance with applicable law and CFPB Bulletin 12-01,³ we note that, with respect to coordinating with other federal and state regulators, the Proposed Guidance merely includes references to the CFPB's intent to coordinate with other federal regulators and potential agreements that the CFPB hopes to enter into with state authorities in relation to the NAL Program. While the IPA appreciates the CFPB's intent to provide some comfort that a participating company will be shielded from liability through the CFPB's coordination efforts, we are concerned that without some clearer assurance that information provided to the CFPB will not be used against a company as part of an enforcement action, companies may remain hesitant to participate in the NAL Program.

In particular, we note that many states impose requirements on financial services companies that often match, or closely track, federal requirements. While the CFPB notes that it is interested in entering into agreements with state authorities, it is unclear if the CFPB intends to obtain assurances as part of these agreements that a participating company will not face state liability or if the CFPB instead believes that any state law requirements would be preempted through the granting of a NAL.

³ CFPB Bulletin 12-01, available at https://files.consumerfinance.gov/f/2012/01/GC_bulletin_12-01.pdf (noting that it is the CFPB's policy to routinely share confidential information with prudential regulators and state regulators sharing supervisory jurisdiction over institutions supervised by the CFPB).



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IPA recommends that the CFPB outline what its policies are in the event there is a data breach

In our previous comment letter filed on October 3, 2018, in response to the CFPB's proposed revisions to its trial disclosure program, our members expressed concerns with how the CFPB maintains and safeguards information submitted by an applicant or participating company. Our members have expressed the same concern with respect to the CFPB's safeguarding of information submitted under the NAL Program. In particular, we note that the Proposed Guidance does not include details on how information submitted to the CFPB will be protected from a data breach and request that any finalized changes to the NAL Program clarify this point. Our members note that, in 2017 alone, according to a report by the Government Accountability Office, federal agencies reported 35,277 information security incidents to the Department of Homeland Security,⁴ resulting in instances of hackers gaining access to sensitive and private information that was held by the federal government. For this reason, without clearer policies and assurances in place, it is unlikely that the revised NAL Program will encourage greater participation from industry participants out of a fear that information provided to the CFPB may be compromised and used against a company at a later time.

Providing an effective means to work with the CFPB on the receipt of an NAL or participation in a Sandbox is of particular importance to prepaid account providers

We believe that implementing a revised NAL Program that effectively encourages more participation is of particular importance to participants in the prepaid industry covered by the CFPB's prepaid account rule,⁵ because, effective April 1, 2019, these providers will be covered by a number of new regulations, including, but not limited to, a prescriptive disclosure regime and restrictions on the offering of credit services, that are not shared by other, similar products. For this reason, a revised NAL Program would be of particular significance to prepaid providers because they may otherwise not have an avenue for testing new products and services without violating the provisions of the prepaid account rule. For this reason, we urge the CFPB to move forward with its revised NAL Program with the additional clarifications and assurances highlighted above.

Conclusion

The IPA appreciates the opportunity to submit feedback on the Proposed Guidance. If you have any questions, please do not hesitate to contact me at the number listed below or at: btate@ipa.org.

⁴ GAO, Agencies Need to Improve Implementation of Federal Approach to Securing Systems and Protecting against Intrusions, December 2018, available at <https://www.gao.gov/assets/700/696105.pdf>.

⁵ 81 Fed. Reg. 83934 – 84387 (Nov. 22, 2016); 83 Fed. Reg. 6364 – 6449 (Feb. 13, 2018).



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777 6th Street, 11th Floor

Washington, DC 20001

202.548.7200

Sincerely,

Brian Tate
President and CEO
IPA
(202) 507-6181

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